

ORDINANCE NO. O2014-018

AN ORDINANCE of the City Council of the City of Tumwater, Washington, related to enforcement and appeals and amending or deleting sections of the Tumwater Municipal Code as more particularly set forth herein.

WHEREAS, the City Council has adopted Chapter 1.10 of the Tumwater Municipal Code (TMC) establishing an efficient, civil administrative system to enforce the city regulations and to provide an opportunity for an appeal of determinations of violations; and

WHEREAS, the Tumwater hearing examiner, as provided in Chapter 2.58 TMC, has authority to hear appeals of administrative decisions; and

WHEREAS, the City Council finds that certain sections of the TMC relating to appeals are outdated, duplicative or inconsistent with TMC Chapters 1.10 and 2.58; and

WHEREAS, the City Council finds that it is in the best interests of the citizens of Tumwater to amend or delete the following code sections to provide consistency in the enforcement of the Tumwater Municipal Code;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF TUMWATER, STATE OF WASHINGTON, DOES ORDAIN AS FOLLOWS:

Section 1. Section 2.62.060 of the Tumwater Municipal Code, "Review of changes to Tumwater register of historic places properties," is hereby amended to read as follows:

2.62.060 Review of changes to Tumwater register of historic places properties.

A. Review Required. No person shall change the use, construct any new building or structure, or reconstruct, alter, restore, remodel, repair, move, or demolish any existing property on the Tumwater register of historic places or within an historic district on the Tumwater register of historic places without review by the commission and without receipt of a certificate of appropriateness, or in the case of demolition, a waiver, as a result of the review. Historic cemeteries shall be reviewed under subsection C of this section and in compliance with TMC Chapter 12.40.

The review shall apply to all features of the property, interior and exterior, that contribute to its designation and are listed on the nomination form. Information required by the commission to review the proposed changes are established in rules.

B. Exemptions. The following activities do not require a certificate of appropriateness or review by the commission: ordinary repair and maintenance – which includes painting – or emergency measures defined in TMC 2.62.030.

C. Review Process.

1. Requests for Review and Issuance of a Certificate of Appropriateness or Waiver. The building or zoning official shall report any application for a permit to work on a designated Tumwater register property or in a Tumwater register historic district to the commission. If the activity is not exempt from review, the commission shall notify the applicant of the review requirements. The building or zoning official shall not issue any such permit until a certificate of appropriateness or a waiver is received from the commission but shall work with the commission in considering building and fire code requirements.

2. Commission Review. The owner or his/her agent (architect, contractor, lessee, etc.) shall apply to the commission for a review of proposed changes on a Tumwater register property or within a Tumwater register historic district and request a certificate of appropriateness or, in the case of demolition, a waiver. Each application for review of proposed changes shall be accompanied by such information as is required by the commission established in its rules for the proper review of the proposed project.

The commission shall meet with the applicant and review the proposed work according to the design review criteria established in rules. Unless legally required, there shall be no notice, posting, or publication requirements for action on the application, but all such actions shall be made at regular meetings of the commission. The commission shall complete its review and make its recommendations within thirty days of the date of receipt of the application. If the commission is unable to process the request, the commission may ask for an extension of time.

The commission's recommendations shall be in writing and shall state the findings of fact and reasons relied upon in reaching its decision. Any conditions agreed to by the applicant in this review process shall become conditions of approval of the permits granted. If the owner agrees to the commission's recommendations, a certificate of appropriateness shall be awarded by the commission according to standards established in the commission's rules.

The commission's recommendations and, if awarded, the certificate of appropriateness, shall be transmitted to the building or zoning official. If a certificate of appropriateness is awarded, the building or zoning official may then issue the permit.

3. Demolition. A waiver of the certificate of appropriateness is required before a permit may be issued to allow whole or partial demolition of a designated Tumwater register property or in a Tumwater register historic district. The owner or his/her agent shall apply to the commission for a review of the proposed demolition and request a waiver. The applicant shall meet with the commission in an attempt to find alternatives to demolition. These negotiations may last no longer than forty-five days from the initial meeting of the commission, unless either party requests an extension. If no request for an extension is made and no alternative to demolition has been agreed to, the commission shall act and advise the official in charge of issuing a demolition permit of the approval or denial of the waiver of a certificate of appropriateness. Conditions in the case of granting a demolition permit may include allowing the commission up to forty-five additional days to develop alternatives to demolition. When issuing a waiver the commission may require the owner to mitigate the loss of the Tumwater register property by means determined by the commission at the meeting. Any conditions agreed to by the applicant in this review process shall become conditions of approval of the permits granted. After the property is demolished, the commission shall initiate removal of the property from the register.

4. Appeal of Approval, Denial or Waiver of a Certificate of Appropriateness. The commission's decision regarding an approval, denial or waiver of a certificate of appropriateness may be appealed to the city council hearing examiner within ten days. The appeal must state the grounds upon which the appeal is based. The appeal shall be reviewed by the city council hearing examiner only on the records of the commission. Appeal of the city council hearing examiner's decision regarding an approval, denial or waiver of a certificate of appropriateness may be appealed to superior court.
(Ord. 096-044, Amended, 12/17/1996; Ord. 1400, Added, 10/19/1993)

Section 2. Section 5.50.230 of the Tumwater Municipal Code, "Procedure for appealing a license/permit denial," is hereby amended to read as follows:

5.50.230 Procedure for appealing a license/permit denial.

A. When the finance director refuses to grant a license or permit, he/she shall notify the applicant in writing of the same, describing the reasons therefor, and shall inform the applicant of his right to appeal to the city council hearing examiner within ten days of the date of the written notice by filing a written notice of appeal with the city clerk containing a statement of the specific reasons for the appeal and a statement of the relief requested.

B. Within ten days of receiving a timely appeal, the finance director shall forward the administrative record of the licensing decision to the city council hearing examiner and a hearing shall be scheduled and notice sent pursuant to TMC 2.58.

~~C. When an applicant has timely appealed the finance director's decision, the city council shall review the administrative record at the next regularly scheduled meeting for which proper notice can be given. Written notice of the date and time of the scheduled meeting will be given to the applicant by the finance director by mailing the same, postage prepaid, to the applicant at the address shown on the license or permit application.~~

~~DC. The applicant and finance director or his representative shall be given an opportunity to argue the merits of the appeal before the city council. The hearing shall be limited to the administrative record before the hearing examiner. Oral argument by each party shall not exceed ten minutes, and shall be limited to the administrative record before the council. New evidence shall not be presented by the parties or accepted by the council.~~hearing examiner.

~~ED. The city council~~hearing examiner shall uphold the finance director's decision unless it finds the decision is not supported by substantial evidence in the administrative record. The applicant shall bear the burden of proof.

~~F. The city council shall issue a written decision within ten days of hearing the appeal. The council may uphold the finance director's decision and deny the permit, overrule the finance director's decision and grant the permit, or remand the matter to the finance director for further review and action. The finance director shall complete further action or review within thirty days of receiving the remand.~~

~~GE. The decision of the hearing examiner~~ Appeal to the city council shall constitute the final administrative review decision of the city.
(Ord. O94-020, Added, 05/03/1994)

Section 3. Section 8.30.040 of the Tumwater Municipal Code, "Permit required for sales—Application," is hereby amended to read as follows:

8.30.040 Permit required for sales – Application.

A. An application for a permit to sell fireworks shall be made in writing to the fire chief or his or her designee no later than June 15 of the year for which the permit is sought on forms provided by the city. Permit fees, inspection, and plan review charges shall be established by the city council and set forth in the city's fee resolution.

B. The fire chief or his or her designee may approve, deny or condition any such application in writing. The person applying for a permit may appeal in writing the denial of the permit or the conditions of the permit to the ~~fire chief~~city administrator. The appeal shall be based solely upon written information provided

by the applicant and fire chief and information obtained ~~or held by the fire chief~~ city administrator and no hearing shall be required. The determination of the ~~fire chief~~ city administrator shall be final.

(Ord. O2012-010, Added, 06/05/2012)

Section 4. Section 12.12.070 of the Tumwater Municipal Code, “Failure to construct according to specifications,” is hereby deleted in its entirety.

~~12.12.070 — Failure to construct according to specifications.~~

~~In the event that the construction covered under this chapter is not performed in accordance with the established specifications, such construction may be removed by the city. Upon the failure of the owner to take such corrective steps, as outlined, within thirty days’ written notice by the department of public works, costs of such removal and replacement, as performed by the city, shall be charged to the owner of the real property involved and shall become a lien against the premises until paid. Any person aggrieved by the decision of the department of public works may appeal to the city council.~~

~~(Ord. 443, Added, 06/04/1963)~~

Section 5. Section 12.12.090 of the Tumwater Municipal Code, “Violation--Penalty,” is hereby amended to read as follows:

12.12.090 Violation – Enforcement and Penalty.

A. Violations of the provisions of this title, or failure to comply with any of its requirements, shall constitute a misdemeanor. In addition, violators shall pay all costs and expenses involved in the case. Each day such violation continues shall be considered a separate and distinct offense. ~~All persons violating this chapter shall be guilty of a misdemeanor.~~

B. Notwithstanding subsection A, criminal enforcement proceedings do not preclude or limit any other forms of enforcement available to the city including, but not limited to, enforcement under any provision of TMC Chapter 1.10.

(Ord. O2011-007, Amended, 07/19/2011; Ord. 443, Added, 06/04/1963)

Section 6. Section 12.24.070 of the Tumwater Municipal Code, “Appeals,” is hereby amended to read as follows:

12.24.070 Appeals.

Appeals from administrative actions made under this chapter may be made by any citizen or property owner to the hearing examiner in the manner provided in TMC Chapter 2.58 ~~within ten days after such action transpires, stating in substance that appeal is being made from such action to the city council. The finance department shall thereupon call such appeal to the attention of the city council at the next~~

~~regularly scheduled meeting, at which meeting, or subsequent meeting the appellant and the public works director may present evidence. Action taken by the city council on such appeal shall be final.~~

(Ord. O2011-002, Amended, 03/01/2011; Ord. O96-027, Amended, 10/15/1996; Ord. 909, Added, 08/15/1981)

Section 7. Section 13.14.100 of the Tumwater Municipal Code, “Appeals,” is hereby deleted in its entirety.

~~13.14.100 — Appeals.~~

~~Any party aggrieved by a decision of a city employee in the administration of this chapter may appeal said decision to the city council. The decision of the city council shall be final.~~

~~(Ord. 1215, Added, 02/06/1990)~~

Section 8. Table 14.08.030, located following Section 14.08.040 of the Tumwater Municipal Code, is updated as follows:

Table 14.08.030

Key:

R = Recommendation to Higher Review Authority;

D = Decision;

A = Appeal Decision;

C = Closed Record Appeal Hearing;

OP = Open Record Predetermination Hearing

	HISTORIC COMMISSION	COMMUNITY DEVELOPMENT DEPARTMENT STAFF	DEVELOPMENT REVIEW COMMITTEE	HEARING EXAMINER	PLANNING COMMISSION	CITY COUNCIL
ZONING						
CONDITIONAL USE PERMITS			R	D(OP)		A(C)
VARIANCE			R	D(OP)		
SITE-SPECIFIC REZONES REQUIRED AS A RESULT OF A COMPREHENSIVE PLAN CHANGE					R(OP)	D(OP)
SITE-SPECIFIC REZONES NOT REQUIRING A COMPREHENSIVE PLAN AMENDMENT		R		D(OP)	R(OP)	D(OP)
ZONING TEXT AMENDMENT (DEV.					R(OP)	D(OP)

	HISTORIC COMMISSION	COMMUNITY DEVELOPMENT DEPARTMENT STAFF	DEVELOPMENT REVIEW COMMITTEE	HEARING EXAMINER	PLANNING COMMISSION	CITY COUNCIL
REG. CHANGES)						
AREA WIDE MAP AMENDMENT					R(OP)	D(OP)
HOME OCCUPATION		D		A(OP)		
CERTIFICATE OF APPROPRIATENESS	D	R		<u>A(C)</u>		<u>A(C)</u>
COMPREHENSIVE PLAN						
C.P. TEXT AMENDMENT					R(OP)	D(OP)
C.P. MAP AMENDMENT					R(OP)	D(OP)
LAND DIVISION						
REPLAT			R	D(OP)		
PLAT VACATION			R	D(OP)		
BLA		D		A(OP)		
LOT CONSOLIDATION		D		A(OP)		
PRELIMINARY PLAT			R	D(OP)		
SHORT PLAT		D		A(OP)		
FINAL PLAT			R			D
PUD			R	D(OP)		<u>A(C)</u>
BINDING SITE PLAN			D	A(OP)		
PLAT TIME EXTENSION		D		A(OP)		
PLAT ALTERATION W/ HEARING		R		D(OP)		
PLAT ALTERATION W/O HEARING		D		A(OP)		
ENVIRONMENTAL						
WETLAND PERMIT		D		A(OP)		
TREE PLANS		D		A(OP)		
SEPA DET.		D		A(OP)		
SHORELINES						
SUB. DEV. PERMIT			R	D(OP)		
CONDITIONAL USE PERMIT			R	D(OP)		
VARIANCE			R	D(OP)		
EXEMPT		D		A(OP)		

	HISTORIC COMMISSION	COMMUNITY DEVELOPMENT DEPARTMENT STAFF	DEVELOPMENT REVIEW COMMITTEE	HEARING EXAMINER	PLANNING COMMISSION	CITY COUNCIL
OTHER						
DEV. CODE INTERPRETATIONS		D		A(OP)		
BUILDING PERMIT PER IBC		D		A(OP)		
ADMINISTRATIVE ORDERS		D		A(OP)		
CIVIL PENALTIES		D		A(OP)		
REASONABLE USE EXCEPTIONS		R		D(OP)		
BUILDING MOVING PERMIT		D		A(OP)		
GRADING PERMIT PER IBC		D		A(OP)		
IMPACT FEE DETERMINATIONS		D		A(OP)		
CONCURRENCY DETERMINATIONS		D		A(OP)		

Section 9. Section 18.36.060 of the Tumwater Municipal Code, "Appeals," is hereby amended to read as follows:

18.36.060 Appeal.

The decision of the hearing examiner shall be final unless appealed to ~~the city council~~ Superior Court in accordance with the provisions of TMC 2.58.150.

(Ord. O95-035, Amended, 12/19/1995; Ord. 1259, Added, 11/06/1990)

Section 10. Section 18.56.060 of the Tumwater Municipal Code, "Resubmittal of application – Appeal" is hereby amended to read as follows:

18.56.060 Resubmittal of application – Appeal.

~~An application which has been denied by the hearing examiner shall not be resubmitted to the hearing examiner within six months of the date of denial. The decision of the hearing examiner shall may be final unless appealed to Superior Court in accordance with~~ pursuant to the provisions of TMC Chapter 2.58.

(Ord. O2013-025, Amended, 01/07/2014; Ord. O95-035, Amended, 12/19/1995; Ord.

1259, Amended, 11/06/1990; Ord. 883, Added, 05/06/1984)

Section 11. Corrections. The City Clerk and codifiers of this ordinance are authorized to make necessary corrections to this ordinance including, but not limited to, the correction of scrivener/clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.

Section 12. Ratification. Any act consistent with the authority and prior to the effective date of this ordinance is hereby ratified and affirmed.

Section 13. Severability. The provisions of this ordinance are declared separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section, or portion of this ordinance or the invalidity of the application thereof to any person or circumstance, shall not affect the validity of the remainder of the ordinance, or the validity of its application to other persons or circumstances.

Section 14. Effective Date. This ordinance shall become effective thirty (30) days after passage, approval and publication as provided by law.


ADOPTED this 16th day of December, 2014.

CITY OF TUMWATER



Pete Kmet, Mayor

ATTEST:



Melody Valiant, City Clerk

APPROVED AS TO FORM:



Karen Kirkpatrick, City Attorney

Published: 12-18-2014

Effective Date: 01-17-2015